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January 23, 2015

VIA ECF

Honorable Arthur D. Spatt
United States District Judge
P.O. Box 9014
Central Islip, NY 11722-9014

> **Re:**   ***Lopez-Serrano v. Rockmore***
> ***14-cv-06056***
> ***Our File No. 12-0134***

Dear Judge Spatt:

I represent the Plaintiff in the above referenced matter.   I submit this letter as Plaintiff's sur-reply in opposition to the Defendant's motion to dismiss, and pursuant to your order of January 23, 2015.

The first paragraph of the Order of Robert Bruno, J.S.C. dated October 16, 2014, and issued in the State Case, a copy of which is annexed hereto as Exhibit 1, states:

> This matter is hereby certified for trial and plaintiff[] is directed to file note of issue within 90 days.   If plaintiff does not file a note of issue within 90 days this action is deemed dismissed without further order of this Court.

The effective dismissal date, according to the self-executing order, is January 14, 2015.   See Exhibit 1.

The Defendant cannot dispute that the first and only settlement offer was made verbally on October 16, 2014, after two years of intense litigation.   I memorialized the verbal offer in an email on October 24, 2014.   A copy of this email exchange between counsel is annexed hereto as Exhibit 2.

An 'offer' does not moot a cause of action, although an offer of judgment under Rule 68 may preclude a plaintiff from recovering post-offer attorneys' fees if the plaintiff rejects the offer, and the plaintiff eventually obtains a judgment less than the rejected offer. *Stanczyk v. City of N.Y.*, 752 F.3d 273, 280 (2d Cir. 2014).

Sur Reply in Further Opposition to Motion to Dismiss
Lopez-Serrano v. Rockmore
Case No. 14-cv-06056 (ADS)(GRB)
Our File No. 12-0134
January 23, 2015
Page 2 of 2

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   Plaintiff respectfully requests that the Defendant's motion to dismiss be denied in its entirety.

                  Respectfully submitted,

  cc: David Feather, Esq., VIA ECF